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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/747,696	12/30/2003	Patrick D. Blattner	06975-533001 / AOL 180; A	2885
26171 7590 10/21/2008 FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			EXAMINER PATEL, HARESH N	
			ART UNIT 2454	PAPER NUMBER
			NOTIFICATION DATE 10/21/2008	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

Office Action Summary	Application No. 10/747,696	Applicant(s) BLATTNER ET AL.	
	Examiner HARESH N. PATEL	Art Unit 2454	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 July 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-53 and 80-83 is/are pending in the application.
- 4a) Of the above claim(s) 1-24 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 80-83 is/are allowed.
- 6) ☒ Claim(s) 25-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/12/2008</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 25-53 are subject to examination. Claims 80-83 are allowed. Claims 1-24 are withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 25-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller 6,629,793 (Hereinafter Miller), as per office action dated 3/18/2008.
4. Claims 25-53 are rejected under 35 U.S.C. 102(e) as being anticipated by Wies et al., 7,159,008 (Hereinafter Wies), as per office action dated 3/18/2008.
5. Claims 25-53 are rejected under 35 U.S.C. 102(e) as being anticipated by De Vries, 2005/0227676 (Hereinafter De Vries), as per office action dated 3/18/2008.

Response to Arguments

6. Applicant's arguments filed 7/18/2008, page 13-18 have been fully considered but they are not persuasive. Therefore, rejection of the rejected claims is maintained.

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Regarding the applicant's concern, Miller fails to disclose at least these "sending" features. Miller discloses a keyboard system for generating emoticons and abbreviations. See Miller, Abstract. On page 4, the Office Action asserts that columns 5 and 14 of Miller disclose the claimed "sending" features. However, both of these columns, as well as the entire disclosure, fail to disclose the sending of a persona comprised of a collection of one or more self expression items and a sender avatar capable of being animated; the examiner respectfully disagrees. The relied upon disclosure and the teachings of the Miller are not limited as concluded by the applicant. Miller discloses the broadly claimed limitations, i.e., please see the cited portions among other places of the cited art that not only contain the applicant concerned content of the art but also the relied upon limitations. The specification of the application under prosecution at page 55 clearly states, The techniques and concepts generally have been described in the context of an instant messaging system that uses an instant messaging host system to facilitate the instant messaging communication between instant message senders and instant message recipients. Other instant message implementations are contemplated, such as an instant message service in which instant messages are exchanged directly between an instant message sender system and an instant message recipient system. Other implementations are within the scope of the following claims. Further, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. **In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963).** Skill in the art is presumed. **In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985).** Every reference relies to some extent on knowledge of persons skilled in the

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art to complement that which is disclosed therein. **In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).**

Regarding the applicant's concern, Wies fails to disclose at least these "sending" features. Wies discloses a chat interface that allows a user to exchange haptic chat messages with other users in a chat session. See Wies, Abstract. On page 4, the Office Action asserts that columns 5 and 6 of Wies disclose the claimed "sending" features. However, both of these pages, as well as the entire disclosure, fail to disclose the sending of a persona comprised of, among other things, a sender avatar capable of being animated; the examiner respectfully disagrees. The relied upon disclosure and the teachings of the Weis are not limited as concluded by the applicant. Weis discloses the broadly claimed limitations, i.e., please see the cited portions among other places of the cited art that not only contain the applicant concerned content of the art but also the relied upon limitations. The specification of the application under prosecution at page 55 clearly states, The techniques and concepts generally have been described in the context of an instant messaging system that uses an instant messaging host system to facilitate the instant messaging communication between instant message senders and instant message recipients. Other instant message implementations are contemplated, such as an instant message service in which instant messages are exchanged directly between an instant message sender system and an instant message recipient system. Other implementations are within the scope of the following claims. Further, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. **In re Preda, 401 F. 2d**

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825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963). Skill in the art is presumed. **In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985).** Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. **In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).**

Regarding the applicant's concern, De Vries fails to disclose at least these "sending" features. De Vries discloses an information service that provides search and notifications to inform when certain people are nearby so as to facilitate communications with those people. See De Vries, Abstract. On page 4, the Office Action asserts that pages 4 and 5 of De Vries disclose these claimed "sending" features. However, both of these pages, as well as the entire disclosure, fail to disclose the sending of a persona comprised of, among other things, a sender avatar capable of being animated; the examiner respectfully disagrees. The relied upon disclosure and the teachings of the DeVries are not limited as concluded by the applicant. DeVries discloses the broadly claimed limitations, i.e., please see the cited portions among other places of the cited art that not only contain the applicant concerned content of the art but also the relied upon limitations. The specification of the application under prosecution at page 55 clearly states, The techniques and concepts generally have been described in the context of an instant messaging system that uses an instant messaging host system to facilitate the instant messaging communication between instant message senders and instant message recipients. Other instant message implementations are contemplated, such as an instant message service in which instant messages are exchanged directly between an instant message sender system and an instant

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message recipient system. Other implementations are within the scope of the following claims. Further, when reviewing a reference the applicants should remember that not only the specific teachings of a reference but also reasonable inferences which the artisan would have logically drawn therefrom may be properly evaluated in formulating a rejection. **In re Preda, 401 F. 2d 825, 159 USPQ 342 (CCPA 1968) and In re Shepard, 319 F. 2d 194, 138 USPQ 148 (CCPA 1963).** Skill in the art is presumed. **In re Sovish, 769 F. 2d 738, 226 USPQ 771 (Fed. Cir. 1985).** Every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein. **In re Bode, 550 F. 2d 656, 193 USPQ 12 (CCPA 1977).**

Allowable Subject Matter

New claims 80-83 are allowed.

Note: Claiming claims 25-29 dependent under new claim 80 would make these claims allowable with subject matter of claim 80.

Conclusion

7. In order to expedite the prosecution of this case, multiple references are used for the rejections to demonstrate that several references disclose the claimed subject matter of the claims.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner has cited particular columns and line numbers and/or paragraphs and/or sections and/or page numbers in the reference(s) as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety, as potentially teaching, all or part of the claimed invention, as well as the context of the passage, as taught by the prior art or disclosed by the Examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Haresh Patel whose telephone number is (571) 272-3973. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday from 10:00 am to 8:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached at (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Haresh N. Patel/

Primary Examiner, Art Unit 2454

10/10/08